IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.589 OF 2005
IN
SUMMARY SUIT NO.586 OF 2002

Ayodhya Prakash Sidhar. ..Plaintiff.
Vs.
Vasantbhai L. Parmar. ..Defendant.

Mrs. Nadvi Bhatia alongwith P.S.Gidwani for the plaintiff.

Mr. K.Shroiff i/by Aksar Law for the Applicants.

CORAM : A.M. KHANWILKAR, J.
DATED : 19/7/2005.

P.C.:

1. Heard counsel for the parties.

2. The plaintiff has filed Summary Suit No. 586 of 2001 against the defendant/applicant which has been decreed on 18.6.2003 directing the defendant/applicant to pay to the plaintiff sum of Rs.7/- lacs with interest thereon at the rate of 6% per annum thereon from 20.12.2001 till the date of decree and further interest on the decretal amount from the date of decree at the rate of 6% per annum and costs of the suit. The defendant has failed to satisfy the said decree. No appeal has been preferred nor any proceedings have been taken out

for setting aside the said decree. This position is fairly accepted by the counsel for the defendant appearing in this court. Accordingly, the execution proceeding and warrant of attachment was obtained on 14.2.2005. The defendant by filing present application not only prays for setting aside the warrant of attachment but also for modification of the decree by permitting the defendant to pay the amount by monthly instalment of Rs.25,000/- till the decree is fully satisfied. This request is made on the assertion that the defendant is not in a position to honour the commitment of satisfying the decree due to financial problems. This application is however, resisted by the plaintiff. It is contended that the plaintiff is 82 years of age and offer of paying amount in instalment of Rs.25,000/- p.m. will result in injustice to the plaintiff. The plaintiff is entitled to the decretal amount and therefore, it is open to the plaintiff to proceed against the defendant for recovery of such amount in accordance with law.

3. Having considered the rival submissions, I find substance in the objection taken by the plaintiff that no indulgence be shown to the defendant to pay the decretal amount in instalment of Rs.25,000/-

p.m. till the satisfaction of the decretal amount. As mentioned earlier, the plaintiff is 82 years of age. The defendant has avoided to satisfy the decree passed in favour of the plaintiff. In such situation, the plaintiff ought not to be precluded from proceeding against the defendant for recovery of dues as may be permissible by law. Indeed, the defendant has placed on record that due to financial problems, he is not in a position to satisfy the decree forthwith. However, there is sufficient property available for the execution of the decree in favour of the plaintiff and the plaintiff is entitled to proceed against such property for satisfaction of the decree in accordance with law. Hence, chamber summons is rejected.

4. It is made clear that, I am not examining any other issue which may arise for consideration in the context of taking further steps on the basis of the subject warrant of attachment.

(A.M. KHANWILKAR,J.)